

**TOWN OF BUENA VISTA, COLORADO  
ORDINANCE NO. 2  
(SERIES OF 2016)**

**AN ORDINANCE OF THE TOWN OF BUENA VISTA, COLORADO,  
ADDING A NEW ARTICLE VI TO CHAPTER 6 OF THE BUENA VISTA  
MUNICIPAL CODE CONCERNING THE REGULATION OF RETAIL  
MARIJUANA ESTABLISHMENTS**

**WHEREAS**, on November 6, 2012, the voters of the State of Colorado approved Amendment 64, legalizing the possession, use, display, transport, transfer and consumption of marijuana accessories or one ounce or less of marijuana by persons twenty-one years of age or older within the State of Colorado;

**WHEREAS**, during the 2013 legislative session, the Colorado Legislature adopted the Retail Marijuana Code, C.R.S. § 12-43.4-101 *et seq.*;

**WHEREAS**, the Board of Trustees finds and determines that the Colorado Retail Marijuana Code now provides a statutory framework for the regulation of retail marijuana establishments;

**WHEREAS**, the Board of Trustees desires to permit retail marijuana stores and retail marijuana cultivation facilities and regulate such operations in order to mitigate the negative impacts that retail marijuana stores and cultivation facilities might have on surrounding properties;

**WHEREAS**, the Town desires to prohibit retail marijuana products manufacturing facilities and retail marijuana testing facilities; and

**WHEREAS**, the Board of Trustees finds and determines that through this Ordinance it intends to establish a nondiscriminatory mechanism by which the Town can control, through appropriate regulation, the location and operation of retail marijuana stores and cultivation facilities within the Town.

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BUENA VISTA, COLORADO:**

**Section 1.** Chapter 6 of the Buena Vista Municipal Code is hereby amended by the addition of a new Article VI as follows:

**ARTICLE VI  
RETAIL MARIJUANA**

**Sec. 6-120. Purpose and incorporation of state law**

(a) The purpose of this Article is to implement the provisions of the Colorado Retail Marijuana Code, C.R.S. § 12-43.4-101, *et seq.*, which authorizes the licensing and regulation of retail marijuana establishments and affords local governments the option to determine whether to

allow retail marijuana establishments within their respective jurisdictions and to adopt licensing requirements that are supplemental to or more restrictive than the requirements set forth in state law.

(b) The provisions of the Colorado Retail Marijuana Code and any rules and regulations promulgated thereunder as the same may be amended from time to time, are incorporated herein by reference except to the extent that more restrictive or additional regulations are set forth in this Article. In addition to the regulations set forth in this Article, the Town may enforce any provision of the Retail Marijuana Code and any rules and regulations promulgated thereunder applicable to licensees.

#### **Sec. 6-121. Definitions**

(a) For purposes of this Article, the following terms shall have the following meanings:

*Applicant* means a person twenty-one (21) years of age or older who has submitted an application for a license or renewal of a license issued pursuant to this Article. If the applicant is an entity and not a natural person, *applicant* shall include all persons who are the members, managers, partners, officers or directors of such entity.

*Colorado Retail Marijuana Code* means Article 43.4 of Title 12, Colorado Revised Statutes.

*Consumer* means a person twenty-one (21) years of age or older who purchases marijuana or marijuana products for personal use by a person twenty-one (21) years of age or older, but not for resale to others.

*Cultivation* or *cultivate* means the process by which a person grows a marijuana plant.

*Dual operation* means a business that operates as both a licensed medical marijuana business and a licensed retail marijuana establishment in accordance with this Article.

*Industrial Hemp* means the plant of the genus *cannabis* and any part of such plant, whether growing or not, with a Delta-9 tetrahydrocannabinol concentration that does not exceed three-tenths percent on a dry weight basis.

*Good cause* means: (1) the licensee has violated, does not meet, or has failed to comply with any of the terms, conditions or provisions of this Article or the Colorado Retail Marijuana Code and any rule and regulation promulgated pursuant to this Article or the Colorado Retail Marijuana Code; (2) the licensee has failed to comply with any special terms or conditions that were placed on its license at the time the license was issued, or that were placed on its license in prior disciplinary proceedings or that arose in the context of potential disciplinary proceedings; or (3) the licensee's retail marijuana establishment has been operated in a manner that adversely affects the public health, welfare or safety of the immediate neighborhood in which the retail marijuana establishment is located. Evidence to support such a finding can include: (i) a continuing pattern of offenses against the public peace, as defined in Chapter 10, Article VIII of the Buena Vista Municipal Code; (ii) a continuing pattern of drug-related criminal conduct

within the premises or in the immediate area surrounding the premises arising out of the operation of the establishment; or (iii) a continuing pattern of criminal conduct directly related to or arising from the operation of the retail marijuana establishment.

*License* means a document issued by the Town officially authorizing an applicant to operate a retail marijuana store or retail marijuana cultivation facility pursuant to this Article.

*Licensee* means the person to whom a license has been issued pursuant to this Article.

*Licensed premises* means the premises specified in an application for a license under this Article, which is owned or in possession of the licensee and within which the licensee is authorized to distribute, sell or test retail marijuana or retail marijuana products in accordance with state and local law.

*Local licensing authority* means the Board of Trustees of the Town of Buena Vista.

*Marijuana* means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. *Marijuana* does not include industrial hemp, nor does it include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

*Marijuana accessories* means any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.

*Medical marijuana business* means a medical marijuana center, optional premises cultivation operation, or medical marijuana-infused products manufacturer as defined in the Colorado Medical Marijuana Code.

*Person* means a natural person, partnership, association, company, corporation, limited liability company or organization.

*Retail marijuana* means marijuana that is cultivated, manufactured, distributed or sold by a licensed retail marijuana establishment.

*Retail marijuana cultivation facility* means an entity licensed to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

*Retail marijuana establishment* means a retail marijuana store, a retail marijuana cultivation facility, a retail marijuana products manufacturing operation or a retail marijuana testing facility.

*Retail marijuana products* means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients that are intended for use or consumption, such as but not limited to, edible products, ointments and tinctures.

*Retail marijuana product manufacturing facility* means an entity licensed to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

*Retail marijuana store* means an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers.

*Retail marijuana testing facility* means an entity licensed by the Town and State of Colorado to analyze and certify the safety and potency of marijuana.

*School* means a public or private preschool or a public or private elementary, middle, junior high or high school.

*State licensing authority* means the authority created by the Colorado Department of Revenue for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, sale and testing of retail marijuana in the State of Colorado pursuant to C.R.S. § 12-43.4-201.

(b) In addition to the definitions provided in subsection (a) hereof, other terms used in this Article shall have the meaning ascribed to them in Article XVIII, § 16 of the Colorado Constitution, or the Colorado Retail Marijuana Code, and such definitions are hereby incorporated into this Article by reference.

#### **Sec. 6-122. License Required.**

The Town hereby authorizes the operation of retail marijuana stores and retail marijuana cultivation facilities in the Town as set forth in this Article. It shall be unlawful for any person to establish or operate a retail marijuana store or retail cultivation facility in the Town without first having obtained a license for such establishment from the local licensing authority. Such license shall be kept current at all times and a failure to maintain a current license shall constitute a violation of this Section. Retail marijuana product manufacturing facilities and retail marijuana testing facilities are prohibited.

#### **Sec. 6-123. Requirements of application for license; payment of application fee; denial of license.**

(a) A person seeking a license or renewal of a license issued pursuant to this Article shall submit an application to the local licensing authority on forms provided by the Town Clerk. At the time of application, each applicant shall pay a nonrefundable fee to the Town in an amount to be determined by the Town by separate Resolution to defray the costs incurred by the Town for costs including but not limited to inspection, administration, and enforcement of retail

marijuana stores and cultivation facilities. In addition, the applicant shall present one (1) of the following forms of identification:

- (1) a driver's license issued by the State of Colorado;
- (2) an identification card, issued by any state for purpose of proving age using requirements similar to those in C.R.S. §§ 42-2-302 and 42-2-303;
- (3) a United States military identification card;
- (4) a valid passport;
- (5) a valid alien registration card; or
- (6) an enrollment card issued by the government authority of a federally recognized tribe located in the state of Colorado.

(b) The applicant shall also provide the following information on a form approved by, or acceptable to the Town, which information shall be required for the applicant, all employees, including the proposed manager of the retail marijuana store or cultivation facility and all persons having a ten percent (10%) or more financial interest in the retail marijuana store or cultivation facility that is the subject of the application or, if the applicant is an entity, having a ten percent (10%) or more financial interest in the entity:

- (1) name, address, date of birth;
- (2) an acknowledgment and consent that the Town will conduct a background investigation, including a criminal history check, and that the Town will be entitled to full and complete disclosure of all financial records of the retail marijuana store or cultivation facility, including records of deposit, withdrawals, balances and loans;
- (3) suitable evidence of proof of lawful presence, residence, if applicable, and good moral character and reputation that the Town may request;
- (4) if the applicant is a business entity, information regarding the entity, including, without limitation, the name and address of the entity, its legal status, and proof of registration with, or a certificate of good standing from, the Colorado Secretary of State, as applicable;
- (5) the name and complete address of the proposed retail marijuana store or cultivation facility, including the facilities to be used in furtherance of such establishment, whether or not such facilities are, or are planned to be, within the territorial limits of the Town;
- (6) a copy of any deed, lease, contract or other document reflecting the right of the applicant to possess the proposed licensed premises along with the conditions of occupancy of the premises, and if by leasehold or similar means, the lease shall specifically recognize and authorize the applicant's use of the premises for the licensed

purposes; provided that if the lease does not specifically authorize the use of the premises for the licensed purposes, the applicant shall provide a notarized statement from the owner of such property authorizing the use of the property for the licensed purposes;

(7) evidence of a valid sales tax license for the establishment;

(8) a "to scale" diagram of the premises, showing, without limitation, a site plan, building layout,

(9) if applicable, all entry ways and exits to the marijuana establishment and, loading zones and all areas in which retail marijuana will be stored or dispensed;

(10) any additional information that the local licensing authority reasonably determines to be necessary in connection with the investigation and review of the application.

(11) a comprehensive business operation plan for the retail marijuana store or cultivation facility which shall contain, without limitation, the following:

a. a security plan meeting the requirements of Section 6-139 of this Article and other applicable provisions of the Colorado Retail Marijuana Code and all rules and regulations promulgated thereunder;

b. a description by category of all products to be sold;

c. a signage plan that is in compliance with all applicable requirements of Section 6-138 and other applicable provisions of the Buena Vista Municipal Code, as well as the Colorado Retail Marijuana Code and all rules and regulations promulgated thereunder; and

d. a plan for the disposal of marijuana and related byproducts meeting the requirements of Section 6-144 of this Article.

(c) A license issued pursuant to this Article does not eliminate the need for the licensee to obtain other required permits or licenses related to the operation of the retail marijuana store or cultivation facility, including, without limitation, a license from the state licensing authority and any development approvals or building permits required by this Article and any other applicable provisions of the Buena Vista Municipal Code.

(d) Upon receipt of an application for a new license, the local licensing authority shall schedule a public hearing on the application to be held not less than thirty (30) days after the date of the completed application. The local licensing authority shall cause a notice of such hearing to be posted in a conspicuous place upon the proposed licensed premises and published in a newspaper of general circulation within the Town not less than ten (10) days prior to the hearing. Such posted notice given by posting shall include a sign of suitable material in dimensions and with lettering as required by the Planning Department. Both the posted and the published notice shall state the type of license applied for, the date of the hearing, the name and address of the

applicant, and such other information as may be required to fully apprise the public of the nature of the application.

(e) Not less than five (5) days prior to the date of the public hearing for a new license, the local licensing authority shall cause its preliminary findings based on its investigation to be known in writing to the applicant and other parties in interest. The local licensing authority shall deny any application that does not meet the requirements of this Article. The local licensing authority shall also deny any application that contains any false, misleading or incomplete information. The local licensing authority shall also deny or refuse to issue a license for good cause. Denial of an application for a license shall not be subject to further administrative review but only to review by a court of competent jurisdiction. At any time prior to commencement of the public hearing, licensee may withdraw its application, and the public hearing shall be cancelled.

(f) Before entering a decision approving or denying the application for a local license, the local licensing authority may consider, except where this Article specifically provides otherwise, the facts and evidence adduced as a result of its investigation, as well as any other facts pertinent to the type of license for which application has been made, including the number, type and availability of retail marijuana stores or cultivation facilities located in or near the premises under consideration, and any other pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed. The local licensing authority shall issue its decision within ninety (90) days of the receipt of the complete license application. Such decision shall be by Resolution and shall state the reasons for the decision. The Resolution shall be sent via certified mail to the state licensing authority and the applicant at the address shown in the application.

(g) The Town shall, prior to issuance of the license, perform an inspection of the proposed licensed premises, including, without limitation, any associated dual operation facility, if applicable, to determine compliance with any applicable requirements of this Article or other applicable requirements of the Buena Vista Municipal Code.

#### **Sec. 6-124. Retail marijuana stores**

(a) A licensed retail marijuana store may sell retail marijuana or retail marijuana products to persons twenty-one (21) years of age or older in the following quantities:

(1) Up to one (1) ounce of retail marijuana or its equivalent in retail marijuana products during a single sales transaction to Colorado residents; or

(2) Up to one-quarter (1/4) ounce of retail marijuana or its equivalent in retail marijuana products during a single sales transaction to a non-Colorado resident.

(b) The following forms of identification may be accepted for purposes of determining Colorado residency: a valid state of Colorado Driver's license; a valid state of Colorado identification card; or any other valid government-issued picture identification that demonstrates that the holder of the identification is a Colorado resident.

(c) The retail marijuana offered for sale and distribution must be packaged and labeled in accordance with state law.

(d) Retail marijuana store licensees are prohibited from selling, soliciting or receiving orders for retail marijuana or retail marijuana products over the internet.

(e) Retail marijuana store licensees are prohibited from selling or giving away any consumable product that is not a retail marijuana product, including but not limited to cigarettes or tobacco products, alcohol beverages, and food products or non-alcohol beverages that are not retail marijuana products.

#### **Sec. 6-125. Retail marijuana cultivation facility**

(a) Licensed retail marijuana cultivation facilities may propagate, cultivate, harvest, prepare, cure, package and label retail marijuana, whether in concentrated form or otherwise. Licensed retail marijuana cultivation facilities may sell retail marijuana that they cultivate to a person licensed to operate a retail marijuana store, retail marijuana products manufacturing facility or another retail marijuana cultivation facility. Licensed retail marijuana cultivation facilities are prohibited from selling retail marijuana to any consumer.

(b) A retail marijuana cultivation facility license shall only be issued to a person who has also been issued a retail marijuana store license within the Town.

(c) All retail marijuana products shall be sealed and conspicuously labeled in compliance with state law.

#### **Sec. 6-126. Limitation on licenses**

(a) No more than two active licenses for retail marijuana stores are permitted within the Town at any given time.

(b) No more than four active licenses for retail marijuana cultivation facilities are permitted within the Town at any given time. A retail marijuana store licensee may only have two cultivation facility licenses at any given time.

(c) During the nine months after the effective date of this Article, a person who is operating in good standing a licensed medical marijuana business within the Town, may apply for a license under this Article.

(d) Nine months after the effective date of this Article, any person who did not meet the requirement of Sec. 6-126(c), may apply for a license under this Article.

(e) If the maximum number of retail marijuana store or cultivation facility licenses has been issued, the Town shall not accept any further applications for such uses until an existing license is either revoked or expires. When the number of licensed retail marijuana stores or cultivation facilities is less than this limit for any reason, including the cessation of operation of a retail marijuana store or cultivation facility either by license revocation or expiration, notice shall be posted on the Town's website indicating that applications for the applicable retail marijuana



use shall be accepted for a sixty-day period. At the end of the sixty-day period, the Town shall review the applications by a random selection process. The first complete application randomly selected will be reviewed, and if it is denied, then the local licensing authority shall review the next complete application randomly selected. Only fully complete applications will be eligible for review. Once a license has been issued, all unselected or rejected applications shall be discarded. The Town shall notify each applicant that is not selected for formal review by the local licensing authority, and shall refund the operating fee, but not the application fee.

#### **Sec. 6-127. Dual operations**

(a) A licensed medical marijuana business may share its existing licensed premises with a retail marijuana establishment as follows:

(1) An optional premises cultivation operation and a retail marijuana cultivation facility may share a licensed premises in order to operate a dual cultivation business operation if the two operations are commonly owned.

(2) A medical marijuana center that does not authorize patients under the age of twenty-one (21) years to be on the premises may hold a retail marijuana store license and operate a dual operation retail business at the same licensed premises if the two operations are commonly owned.

(b) Licensees operating dual cultivation operations must maintain either physical or virtual separation of the facilities, marijuana plants and marijuana inventory. Record keeping for the business operations and labeling of products must allow the Town to clearly distinguish the inventories and business transactions of medical marijuana from retail marijuana.

(c) Provided that a medical marijuana center licensee posts signage that clearly conveys that persons under the age of twenty-one (21) years may not enter, such licensee may share the same entrances and exits to the shared premises with the retail marijuana store and medical and retail marijuana may be separately displayed on the same floor. Record keeping for the business operations of both businesses must allow the Town to clearly distinguish the inventories and business transactions of medical marijuana and medical marijuana-infused products from retail marijuana and retail marijuana products.

(d) Licensees who operate a medical marijuana business and a retail marijuana establishment dual operation shall maintain separate and distinct inventory tracking processes for medical and retail marijuana inventories. The inventories must be clearly tagged or labeled so that the products can be reconciled to a particular medical or retail business.

(e) A medical marijuana center that authorizes medical marijuana patients under the age of 21 years to be on the premises is prohibited from sharing its licensed premises with a retail marijuana store. Even when the two are commonly owned, the two shall maintain distinctly separate licensed premises; including, but not limited to, separate sales and storage areas, separate entrances and exits, separate inventories, separate point-of-sale operations, and separate record-keeping.

## **Sec. 6-128. Location criteria**

Prior to the issuance of a license for a retail marijuana store or cultivation facility, the local licensing authority shall determine whether the proposed location of the retail marijuana store or cultivation facility complies with the requirements of this Section. Failure to comply with the requirements of this Section shall preclude issuance of a license.

(a) Retail marijuana stores or cultivation facilities physically adjacent to a retail store may only be located in the B1, B2, and I-1 Zone Districts. Cultivation facilities which are not physically adjacent to a retail marijuana store may only be in the I-1 Zone District.

(b) No retail marijuana store or cultivation facility shall be located at the following locations:

- (1) within 1,000 feet of any educational institution or school, whether public or private or any library;
- (2) within 1,000 feet of a licensed child care facility;
- (3) within 1,000 feet of any alcohol or drug rehabilitation facility;
- (4) within 1,000 feet of any medical marijuana business unless the medical marijuana business is part of a dual operation with that retail marijuana store;
- (5) within 1,000 feet of any other retail store or cultivation facility;
- (6) within any building or structure that contains a residential unit;
- (7) within the same licensed location as a retail food establishment or wholesale food registrant; or
- (8) upon any Town of Buena Vista owned property.

(c) Although there is no minimum distance standard from the following locations, when reviewing an application, the proximity and compatibility with the following uses shall be considered:

- (1) The exterior boundary of any residential zone district; and
- (2) Any public community center, park, designated recreation trail, hotel or recreation center, or any publicly owned or maintained building open for use to the general public.

(d) The distances described this Section shall be computed by direct measurement from the nearest property line of the land used for the above purposes to the unit within a building or structure housing the retail marijuana store or cultivation facility.

(e) Each retail marijuana store or cultivation facility shall be operated from a permanent location. No retail marijuana store or cultivation facility shall be permitted to operate from a moveable, mobile or transitory location or structure.

(f) The suitability of a location for a retail marijuana store or cultivation facility shall be determined at the time of the issuance of the first license for such establishment. The fact that changes in the neighborhood that occur after the issuance of the first license might render the site unsuitable for a retail marijuana store or cultivation facility under this Section shall not be grounds to suspend, revoke or refuse to renew the license for such store or cultivation facility so long as the license for the establishment remains in effect.

#### **Sec. 6-129. Persons prohibited as licenses and employees**

(a) No license shall be issued to, held by, or renewed by any of the following:

(1) Any corporation, any of whose officers, directors or stockholders are not of good moral character satisfactory to the local licensing authority;

(2) Any partnership, association or company, any of whose officers are not of good moral character satisfactory to the local licensing authority;

(3) Any person employing, assisted by, or financed in whole or in part by any other person who is not of good moral character and reputation satisfactory to the local licensing authority;

(4) Any sheriff, deputy sheriff, police officer, prosecuting officer, and state or local licensing authority or any of its members, inspectors or employees;

(5) Any natural person under twenty-one (21) years of age;

(6) Any person for a licensed location that is also a retail food establishment or wholesale food registrant;

(7) Any person who has not been a resident of Colorado for at least two (2) years prior to the date of the application;

(8) Any person who has discharged a sentence for a felony conviction within the past five (5) years;

(9) Any person who, at any time, has been convicted of a felony for drug possession, distribution or use, unless such felony drug charge was based on possession or use of marijuana or marijuana concentrate that would not be a felony if the person were convicted of the offense on the date he or she applied for the license;

(10) Any entity whose directors, shareholders, partners or other persons having a financial interest in said entity do not meet the criteria set forth above;

(11) Any person who employs another person at a retail marijuana store or cultivation facility who has not submitted fingerprints for a criminal record history check or whose criminal record history check reveals the employee is ineligible; or

(12) Any person who has made a false, misleading or fraudulent statement on his or her application.

(b) No licensee shall employ or contract with any person to perform work functions directly related to the possession, cultivation, dispensing, selling, serving or delivering of marijuana for a licensed retail marijuana store or cultivation facility, any of the following:

(1) Any person who is not of good moral character satisfactory to the local licensing authority;

(2) Any person who is under twenty-one (21) years of age;

(3) Any person who is not currently a resident of Colorado;

(4) Any person who has discharged a sentence for a felony conviction within the past five (5) years;

(5) Any person who, at any time, has been convicted of a felony for drug possession, distribution or use, unless such felony drug charge was based on possession or use of marijuana or marijuana concentrate that would not be a felony if the person were convicted of the offense on the date he or she applied for the license; or

(6) Any sheriff, deputy sheriff, police officer, prosecuting officer, and state or local licensing authority or any of its members, inspectors or employees.

(c) Jurisdiction.

(1) In investigating the qualifications described herein, the local licensing authority may have access to criminal history record information furnished by a criminal justice agency subject to any restrictions imposed by such agency. In the event the local licensing authority takes into consideration information concerning the applicant's criminal history record, the local licensing authority shall also consider any information provided by the applicant regarding such criminal history record, including but not limited to evidence of rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the application for a license.

(2) By filing an application with the Town, applicants consent to the Town accessing all information possessed by the Colorado Marijuana Enforcement Division relating to their application for a license to operate a retail marijuana store or cultivation facility and consent to the release of such information to the Town.

**Sec. 6-130. Issuance of license; duration; renewal.**

(a) Upon issuance of a license, the Town shall provide the licensee with one (1) original of such license for each retail marijuana store or cultivation facility to be operated by the licensee in the Town. Each such copy shall show the name and address of the licensee, and the address of the facility at which it is to be displayed.

(b) Each license issued pursuant to this Article shall be valid for one (1) year from the date of issuance and may be renewed only as provided in this Article. All renewals of a license shall be for no more than one (1) year. An application for the renewal of an existing license shall be made to the local licensing authority not more than sixty (60) days and not less than thirty (30) days prior to the date of expiration of the license. A licensee may submit to the local licensing authority a late renewal application on the prescribed forms and pay a non-refundable late application fee in an amount set by the Board of Trustees via resolution for a renewal application made less than thirty (30) days prior to the date of the expiration of the license. All other provisions concerning renewal applications apply to a late renewal application. The timely filing of a completed renewal application or a late renewal application shall extend the current license until a decision is made on the renewal.

(c) A licensee whose license expires shall not distribute or sell retail marijuana or retail marijuana products until all necessary new licenses have been obtained.

#### **Sec. 6-131. Authority to impose conditions on license.**

The local licensing authority shall have the authority to impose such reasonable terms and conditions on a license as may be necessary to protect the public health, safety and welfare, and to obtain compliance with the requirements of this Article and applicable law.

#### **Sec. 6-132. Annual operations fee.**

Upon issuance of a license or any renewal of a license, the licensee shall pay to the Town a fee in an amount determined by the local licensing authority to be sufficient to cover the annual cost of inspections conducted by the Buena Vista Police Department, and such other departments of the Town as may be designated by the local licensing authority, for the purpose of determining compliance with the provisions of this Article and any other applicable state or local laws or regulations.

#### **Sec. 6-133. Display of license.**

(a) Each license shall be limited to use at the premises specified in the application for such license.

(b) Each license shall be continuously posted in a conspicuous location at the marijuana establishment facility.

#### **Sec. 6-134. Management of licensed premises.**

Licensees who are natural persons shall either manage the licensed premises themselves or employ a separate and distinct manager on the premises and report the name of such manager

to the local licensing authority. Licensees that are entities shall employ a manager on the premises and report the name of the manager to the local licensing authority. All managers must be natural persons who are at least twenty-one (21) years of age. No manager shall be a person who has discharged a sentence for a felony conviction within the past five (5) years, or who has been convicted of a felony for drug possession, distribution or use, unless such felony drug charge was based on possession or use of marijuana or marijuana concentrate that would not be a felony if the person were convicted of the offense on the date he or she applied for the license.

**Sec. 6-135. Change in manager; Change in financial interest.**

(a) Each licensee shall report any change in managers to the local licensing authority within thirty (30) days after the change. Such report shall include all information required for managers under Section 16-134 of this Article.

(b) Each licensee shall report in writing to the local licensing authority any transfer or change of financial interest in the license holder or in the retail marijuana store or cultivation facility that is the subject of the license. Such report must be filed with the local licensing authority within thirty (30) days after any such transfer or change. A transfer application shall be required for any transfer of the capital stock of a corporation or any other interest totaling more than ten percent (10%) of the stock in any one (1) year, as well as any transfer of a controlling interest in the corporation whenever a sufficient number of shares have been transferred to effectuate the transfer of a controlling interest. No person having or acquiring a financial interest in the retail marijuana store or cultivation facility that is the subject of a license shall be a person who has discharged a sentence for a felony conviction within the past five (5) years, or who has been convicted of a felony for drug possession, distribution or use, unless such felony drug charge was based on possession or use of marijuana or marijuana concentrate that would not be a felony if the person were convicted of the offense on the date he or she applied for the license.

(c) Whenever any licensee causes a change in its officers, directors or manager, and a license addendum is required to be filed with the State that does not require a transfer application in accordance with subsection (b) above, an application fee in the amount of one hundred dollars (\$100.00) shall be paid to the Town at the time of filing the addendum with the Town.

**Sec. 6-136. Transfer of ownership; change of location.**

(a) Transfer of ownership. For a transfer of ownership, a license holder shall apply to the local licensing authority on forms provided by the state licensing authority. In considering whether to permit a transfer of ownership, the local licensing authority shall consider only the requirements of this Article, the Colorado Retail Marijuana Code, and the regulations promulgated in conformance therewith. The local licensing authority may hold a hearing on the application for a transfer of ownership, but such hearing shall not be held until a notice of such hearing has been posted on the premises of the licensed retail marijuana store or cultivation facility for a period of at least ten (10) days prior to such hearing, and the applicant has been provided at least ten (10) days prior notice of such hearing.

(b) Change of location. Licensees from other jurisdictions may not transfer their licenses to a location within the Town of Buena Vista without approval by the local licensing

authority. Licensees with a permanent retail establishment in the Town may transfer their license to another location within the Town so long as the applicant and the new location conform to the requirements of this Article.

**Sec. 6-137. Hours of operation.**

A retail marijuana store may open no earlier than 9:00 a.m. and shall close no later than 7:00 p.m. the same day. A retail marijuana store may be open seven (7) days a week.

**Sec. 6-138. Signage and advertising.**

All signage and advertising for a retail marijuana store or cultivation facility shall comply with all applicable state laws as well as the provisions of this Article and other applicable provisions of this Code. No off site premises signage is permitted. Advertisements, signs, displays or other promotional material depicting retail marijuana uses or symbols shall not be shown in any manner which is visible to the public from roadways, pedestrian sidewalks or walkways, or from other public areas. No signage associated with a retail marijuana store or cultivation facility shall use the word "marijuana," "cannabis," or any other word or phrase commonly understood to refer to marijuana unless such word or phrase is immediately preceded by the word "retail"; provided that no signage shall contain words such as "reefer," "ganga," "weed" or other similar slang references to marijuana or cannabis.

**Sec. 6-139. Security requirements.**

(a) Security measures at retail marijuana store or cultivation facility shall include at a minimum the following:

(1) security surveillance cameras installed to monitor all entrances, along with the interior and exterior of the premises, to discourage and facilitate the reporting of criminal acts and nuisance activities occurring at the premises;

(2) robbery and burglary alarm systems which are professionally monitored and maintained in good working condition;

(3) a locking safe permanently affixed to the premises that is suitable for storage of all marijuana and cash stored overnight on the licensed premises except that marijuana that is being processed or dried need not be stored in the locking safe and perishable retail marijuana products must be stored with adequate refrigeration; provided; however, all marijuana and marijuana products must be stored in a limited access area;

(4) exterior lighting that illuminates the exterior walls of the licensed premises and complies with applicable provisions of this Article and other applicable provisions of this Code; and

(5) deadbolt locks on all exterior doors.

(b) All security recordings shall be preserved for at least forty (40) days by the licensee and shall be in a format that can be easily accessed for viewing by Buena Vista Police Department upon request for inspection.

**Sec. 6-140. Required notices.**

(a) There shall be posted in a conspicuous location inside each retail marijuana store or cultivation facility, at least one legible sign containing the following warnings:

- (1) that on-site consumption of marijuana is illegal;
- (2) that the open and public consumption of marijuana in the Town is illegal, and that individuals consuming marijuana within the Town in parks, on sidewalks and streets, or at other public locations will risk criminal prosecution;
- (3) that the use of marijuana or marijuana products may impair a person's ability to drive a motor vehicle or operate machinery, and that it is illegal under state law to drive a motor vehicle or to operate machinery when under the influence of or impaired by marijuana;
- (4) that loitering in or around a retail marijuana store or cultivation facility is prohibited by law;
- (5) that possession and distribution of marijuana is a violation of federal law; and
- (6) that no one under the age of twenty one (21) years is permitted on the premises.

(b) There shall be posted in a conspicuous location at the exterior of each retail marijuana store or cultivation facility near the entrance, one legible sign warning that the facility is monitored by video cameras.

**Sec. 6-141. On-site consumption of marijuana.**

The use, consumption, ingestion or inhalation of retail marijuana or retail marijuana products on or within the premises of a retail marijuana store or cultivation facility is prohibited.

**Sec. 6-142. Cultivation, growing and processing by licensees.**

(a) Subject to the limitations set forth in this Article and C.R.S. § 12-43.4-403 and other applicable laws, the growing, cultivation or processing of marijuana shall be allowed contiguous or not contiguous to the licensed premises of a retail marijuana store that submitted an application to the Town pursuant to Section 6-124 of this Code.

(b) The cultivation, growing, processing, display or storage of marijuana plants by a licensee shall be conducted only at the cultivation facility shown on the licensee's application.



(c) Access to any cultivation facility that is located in the same building as a retail marijuana store shall be secured so as to render the cultivation facility inaccessible to any unauthorized persons during all hours of operation of the establishment facility.

(d) To the extent permitted by law, the Town shall keep confidential the location of all cultivation facilities.

**Sec. 6-143. Visibility of activities; paraphernalia; control of emissions.**

(a) All activities of retail marijuana store or cultivation facility shall be conducted indoors.

(b) Devices, contrivances, instruments and paraphernalia for inhaling or otherwise consuming marijuana, including, but not limited to, rolling papers and related tools, water pipes, and vaporizers may lawfully be sold at a retail marijuana store. No retail marijuana or paraphernalia shall be displayed or kept in a retail marijuana store so as to be visible from outside the licensed premises.

(c) Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting a retail marijuana store or cultivation facility must be provided at all times. In the event that any odors, debris, dust, fluids or other substances exit a retail marijuana store or cultivation facility, the owner of the subject premises and the licensee shall be jointly and severally liable for such conditions and shall be responsible for immediate, full clean-up and correction of such condition. The licensee shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations.

**Sec. 6-144. Disposal of marijuana byproducts.**

The disposal of marijuana, marijuana products, byproducts and paraphernalia shall be done in accordance with plans and procedures approved in advance by the local licensing authority.

**Sec. 6-145. Sales and business license required.**

At all times while a license is in effect the licensee shall possess a valid business license as required by Article II of Chapter 6 of this Code.

**Sec. 6-146. Sales tax.**

Each licensee shall collect and remit Town sales tax on all retail marijuana, retail marijuana products, paraphernalia and other tangible personal property sold by the licensee.

**Sec. 6-147. Required books and records.**

(a) Every licensee shall maintain an accurate and complete record of all retail marijuana purchased, sold or dispensed by the retail marijuana store or cultivation facility in any usable form. Such record shall include the following:

- (1) the identity of the seller involved in each transaction;
- (2) the total quantity of, and amount paid for, the retail marijuana and/or the retail marijuana product(s); and
- (3) the date, time and location of each transaction.

(b) All transactions shall be kept in a numerical register in the order in which they occur.

(c) All records required to be kept under this Article must be kept in the English language in a legible manner and must be preserved and made available for inspection for a period of three (3) years after the date of the transaction. Information inspected by the Buena Vista Police Department or other Town departments pursuant to this Article shall be used for regulatory and law enforcement purposes only and shall not be a matter of public record.

#### **Sec. 6-148. Inspection of licensed premises.**

During all business hours and other times of apparent activity, all licensed premises shall be subject to inspection by the local licensing authority, the Buena Vista Police Department, by law enforcement officers, or such other departments or individuals duly authorized by the Town for the purpose of investigating and determining compliance with the provisions of this Article and any other applicable state and local laws or regulations. Said inspection may include, but need not be limited to, the inspection of books, records and inventory. Where any part of the licensed premises consists of a locked area, such area shall be made available for inspection, without delay, upon request.

#### **Sec. 6-149. Nonrenewal, suspension or revocation of license.**

(a) The local licensing authority may, after notice and hearing, suspend, revoke or refuse to renew a license for good cause, including suspension or revocation of the licensee's license. The local licensing authority is authorized to adopt rules and procedures governing the conduct of such hearings.

(b) The local licensing authority may, in its discretion, revoke or elect not to renew any license if it determines that the licensed premises has been inactive, without good cause, for at least three (3) months.

#### **Sec. 6-150. Violations and penalties.**

In addition to the possible denial, suspension, revocation or nonrenewal of a license under the provisions of this Article, any person, including, but not limited to, any licensee, manager or employee of a retail marijuana store or cultivation facility, or any customer of such

establishment, who violates any of the provisions of this Article, shall be subject to the following penalties:

(a) Any person convicted of having violated any provision of this Article shall be punished as set forth in Section 1-72 of the Buena Vista Municipal Code.

(b) The operation of a retail marijuana store or cultivation facility without a valid license issued pursuant to this Article may be enjoined by the Town in an action brought in a court of competent jurisdiction, including the Buena Vista Municipal Court.

(c) The operation of a retail marijuana store or cultivation facility without a valid license issued pursuant to this Article is also deemed to be a nuisance pursuant to Article I, Chapter 7 of the Buena Vista Municipal Code.

**Sec. 6-151. No Town liability; indemnification.**

(a) By accepting a license issued pursuant to this Article, the licensee waives and releases the Town, its officers, elected officials, employees, attorneys and agents from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of retail marijuana store or cultivation facility owners, operators, employees, clients or customers for a violation of state or federal laws, rules or regulations.

(b) By accepting a license issued pursuant to this Article, all licensees, jointly and severally if more than one (1), agree to indemnify, defend and hold harmless the Town, its officers, elected officials, employees, attorneys, agents, insurers and self-insurance pool against all liability, claims and demands on account of any injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the retail marijuana store or cultivation facility that is the subject of the license.

**Sec. 6-152. No waiver of governmental immunity.**

In adopting this Article, the Board of Trustees is relying on and does not waive or intend to waive by any provision of this Article, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, C.R.S., as from time to time amended, or any other limitation, right, immunity, or protection otherwise available to the Town, its officers or its employees.

**Sec. 6-153. Other laws remain applicable.**

(a) To the extent the State has adopted or adopts in the future any additional or stricter law or regulation governing the sale or distribution of retail marijuana or retail marijuana products, the additional or stricter regulation shall control the establishment or operation of any retail marijuana store or cultivation facility in the Town. Compliance with any applicable state law or regulation shall be deemed an additional requirement for issuance or denial of any license

under this Article, and noncompliance with any applicable state law or regulation shall be grounds for revocation or suspension of any license issued hereunder.

(b) Any licensee may be required to demonstrate, upon demand by the local licensing authority, the Buena Vista Police Department, by law enforcement officers, or such other departments or individuals duly authorized by the Town, that the source and quantity of any marijuana found upon the licensed premises are in full compliance with any applicable state law or regulation.

(c) If the State prohibits the sale, cultivation or other distribution of marijuana through retail marijuana store or cultivation facility, any license issued hereunder shall be deemed immediately revoked by operation of law, with no ground for appeal or other redress on behalf of the licensee.

(d) The issuance of any license pursuant to this Article shall not be deemed to create an exception, defense or immunity to any person in regard to any potential criminal liability the person may have for the cultivation, possession, sale, distribution or use of marijuana.

#### **Sec. 6-154. Rules and regulations.**

The Town Administrator shall have the authority from time to time to adopt, amend, alter and repeal administrative rules and regulations, and file the same with the Town Clerk, as may be necessary for the proper administration of this Article.

#### **Sec. 6-155. Judicial review.**

In accordance with Article 18, § 16 of the Colorado Constitution, decisions by the local licensing authority are subject to judicial review pursuant to C.R.S. § 24-4-106.

**Section 2.** Article XV of Chapter 16 of the Buena Vista Municipal Code is hereby repealed.

**Section 3.** Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Board of Trustees hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one or part or parts be declared unconstitutional or invalid.

**Section 4.** Safety. This Ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

**INTRODUCED, READ, ADOPTED AND ORDERED PUBLISHED** this \_\_\_\_ day of \_\_\_\_\_, 2016.

**THIS ORDINANCE SHALL BECOME EFFECTIVE THIRTY DAYS FROM PUBLICATION.**

TOWN OF BUENA VISTA, COLORADO

By: \_\_\_\_\_  
Mayor, Joel Benson

ATTEST:

\_\_\_\_\_  
Janell Sciacca, Town Clerk

(SEAL)

DRAFT